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SUBJECT: LAND RIGHTS ISSUES EMPHASIZE NEED FOR GREATER TRANSPARENCY
AND LEGAL REFORM

REF: A) 07 HCMC 805 B) HCMC 674 AND PREVIOUS

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CLASSIFIED BY: Angela Dickey, Acting Consul General, EXEC,
State.
REASON: 1.4 (b), (d)

¶1. (SBU) Summary: While few land rights organizers may want to admit it, the GVN is paying close attention to the land use issues that have resulted in demonstrations by provincial farmers throughout Vietnam over the past few years. Conversations with current and former GVN officials and economic analysts at STAR and VNCI illuminated the history of land use rights, the current complaints process for citizens and companies, and the need for more reforms to ensure greater transparency and legal legitimacy in the resolution process. End summary.

GI Calls Process "A Significant Social Problem"

¶2. (SBU) The explosive growth that has characterized Vietnam's economic development has also created socioeconomic issues that present complex governance challenges for the GVN. Land management issues stemming from the GVN's post-1975 expropriation policies as well as more recent large-scale development projects have led to land rights demonstrations in many of Vietnam's cities and provinces. Land rights have become one of the biggest and most complex issues facing leaders in Vietnam today. During recent meetings with the Government Inspectorate (GI) in Hanoi, officials acknowledged that the land claims process "is a significant social problem for us" and communicated a sense of urgency around land management issues. "The State needs more land to use now for infrastructure and development," said Deputy Inspector General Le Tien Hao, "Fast economic growth means that this problem needs to be addressed fast too."

¶3. (C) General Hao explained that land management in Vietnam stalled during the war years, but revisions to the Land Law in 1988, 1993 and 2003 led to the system in use today. He cited 1993 as a watershed year for land rights in Vietnam, since this was the first time individual land use rights--akin to individual property rights within Vietnam's communist system of state-owned land--were established via the system of using "red books" that officially designated land plots and their users. Following further changes to the law in 2003, these red books allowed land users to buy, sell or lease land as well as use it as collateral. An economic analyst at Dragon Capital who co-authored 2007 Vietnam Competitiveness Initiative (VNCI) report "Land Tenure and the Private Sector" said the agricultural development of the 1990's could not have happened without these red books, which gave farmers an avenue to invest in their property and a means to raise capital.

¶4. (C) Former Ministry of Natural Resources and Environment (MONRE) Vice Minister Dang Hung Vo discussed the changing nature of land disputes over time. He estimated that prior to 2003, 70 percent of land disputes dealt with "historical claims," or claims between people who had to leave their land during the war years and those who assumed the use of their vacated properties.

The 2003 revisions to the Land Law sought to address these legacy issues, Vo said, making them less of a problem now. But as the pace of economic growth has increased in recent years, complaints over government land recalls and related administrative decisions now comprise the bulk of cases in the system. At a September conference on land planning held by MONRE and the National Assembly (NA) in HCMC, NA Standing Committee member Tran The Vuong quoted a recent survey that showed 80-90 percent of residents' complaints to state agencies relate to land issues.

¶5. (C) The GI's General Hao said that land user registration increased significantly after revisions to the Land Law were made, but acknowledged that some households still have not received their red books. Hao construed the land disputes in Vietnam, however, as relatively sporadic and isolated to a few difficult personalities and provinces. "We have a compensation policy with which most people agree," said Hao. "A few don't, and they complain. And those who complain have their own reasons." The analyst at Dragon Capital shared Hao's view, stating that land rights protests were more narrowly focused on particular cases where the government's land administration and dispute resolution procedures have been unsatisfactory. In contrast to the opinions expressed by some land rights leaders and political activists, the Dragon Capital analyst did not think land rights protests were representative of broader agitation for a democratic system. He cited the improved economic status of many Vietnamese "with their motorbikes, TVs and glasses of beer" as a definite disincentive for political protest.

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Complaints Process 101

¶6. (SBU) Both the GI and former Vice Minister Vo outlined a fairly succinct complaints process for individual claimants. The 2003 Land Law designates administrative procedures for two types of complaints--disputes over land rights and titles and disputes over land use and administration. The procedures vary slightly depending on whether a claimant possesses documentation (e.g. a red book) regarding the land in question. For households or companies with a red book, the process begins when they send a letter to the commune-level People's Committee outlining their grievance. The Committee will then convene a meeting, which includes the participation of the Fatherland Front, to decide the case. If a claimant is not satisfied with the commune's decision, they can escalate their case to the district-level People's Committee for further review, where the Committee must make a decision within 30 days. From there, dissatisfied claimants can to the provincial-level People's Committee, where reviews must be completed within 45 days. Claimants with documentation can also choose to bypass the administrative channel entirely and bring their case directly to court. (Note: this is different than the U.S. system, where administrative channels must generally be exhausted before a plaintiff can bring a case to court. End note.) If there is no documentation, households must submit their case to the district People's Committee, while companies or organizations submit their case to the provincial People's Committee.

¶7. (SBU) Administrative decisions like land clearances are required to be made six months in advance of the planned action and must include a written rationale. Disputes over administrative decisions involving eminent domain, compensation levels or site clearances begin with a claimant appealing directly to the person or entity that made the administrative decision. If an appeal to the decision-maker is unsuccessful, complainants can choose between going to the courts or following the administrative chain up through higher levels of government.

(Comment: Escalating issues through the various levels of government is a common process for resolving a variety of constituent issues in Vietnam, not just land claims. While multiple bites at the administrative apple may provide more chances for resolution, land rights activists say it also provides more opportunities for corruption, inaction or bureaucratic stonewalling. End comment.)

18. (C) GI officials stressed that the GVN is on the case when it comes to the proper handling of individuals' land complaints, noting that recent efforts to revise the Land Law have taken their problems into account. "When we recall land for public or private enterprise, we pay a lot of attention to the benefits of those whose land is recalled," General Le Tien Hao assured. If the reasons for the complaints are justified, then local and central government agencies must respond. Even if authorities determine the complaints are groundless, General Hao said, "We still have social programs to help these individuals." He cited recent handouts totaling USD \$59,000 from central government coffers to Ben Tre and Tien Giang provinces to augment funds available for land compensation as one example. The GI acknowledged that standardized compensation rates for agricultural land are low, while rates for land zoned for industrial or commercial use are much higher. When individuals are paid according to the current agricultural value of their land versus the future industrial value, disputes arise. National Assembly Standing Committee officials also complained that land use planning has been "illogically implemented" nationwide, noting project contractors often retroactively pay residents the value of their land at the date of the land seizure, even if land prices have gone up in the meantime. In addition, GI officials admitted district and provincial officials "sometimes make mistakes or do the wrong thing," making the land transfer process less fair and transparent. Hao stated that the GI has approached provinces in such cases and asked them to "refocus" their land planning strategies to benefit the people whose land is reclaimed. The GI has also worked on securing stocks and equity in developed land for individuals who are displaced.

19. (SBU) When asked about the finding of the 14 ad-hoc inspection teams that were sent out by the central government in response to the land rights protests in Ho Chi Minh City in 2007 (ref A), the GI said the ad-hoc teams were used to double check on reported cases of malfeasance by local officials and to review unresolved cases and provide guidance on how to settle them. Delegations to Tien Giang and Tay Ninh provinces ultimately concluded that "the protesters' complaints were not right," but recommended that the Prime Minister provide "social support" to these provinces to ameliorate conditions that displaced farmers faced. The GI also made specific recommendations on relief measures. In Tay Ninh, they recommended that the amount of farmland allocated to individuals be increased from one-half to one hectare and that USD \$1,000

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should be provided for reconstructing houses and USD \$500-750 loans be granted for business start-ups. In Soc Trang, the GI directed the provincial People's Committee to recalculate their compensation prices and in An Giang, the central government ordered 1,000 parcels of land and additional funds be provided to people adversely affected by land recalls.

10. (SBU) Former Vice Minister Vo was less optimistic regarding the resolution process and estimated that 50 percent of all land rights complaints go unanswered, indicating that in some cases authorities are unwilling to hear the grievance in the first place. Vo said he had heard of intimidation (police visits, surveillance, etc.) directed at those making complaints and claimed this was the "normal way" authorities dealt with grievances, particularly in central areas of Vietnam. Vo said some provinces handled disputes more transparently than others, and identified Dong Nai province as having a "very open system" where land claims cases were being handled effectively. He attributed this entirely to the enlightened attitudes of provincial leaders there.

Court Always A Last Resort

¶11. (SBU) GI officials said the real incentives for citizens to use the administrative versus the legal system to resolve land disputes were the social handouts that sometimes lie at the end of the administrative process. According to the GI, if an individual's appeal is ultimately rejected by the court system, they are not able to access social programs or funding that may be available because a legally binding decision has determined their claims to be groundless. The fees associated with bring a case to court further discourage individuals from pursuing a judicial route. The GI said that people would rather "try their luck" at winning over local officials and possibly receiving social funds along the way rather than take a chance on the court system. Former Vice Minister Vo said since district courts did not issue decisions independently from the Party, the lack of judicial independence renders court arbitration useless for most complainants, particularly since they have to pay the court fees. Vo said because the court system is weak and the administrative decisions generally unfavorable, people become motivated to protest.

¶12. (C) Support for Trade Acceleration (STAR) representatives also gave Vietnam's judiciary mixed reviews in terms of their ability to accurately interpret and apply legal revisions. One STAR representative explained that the Soviet-style civil law system was dealt a heavy blow in 1976 when law faculties and professionals were either dismissed, reconstituted or reoriented without being given strong leadership, clear directions or guiding principles on how to reform itself. As a result, courts in Vietnam are generally not respected by the National Assembly, other branches of government or the general public. Despite these drawbacks, the increasing number of cases entering the court system in recent years requires--and encourages--improvements in the judicial system. The STAR advisor also noted that there is a concerted effort by the central government to take its obligations under international agreements seriously, which creates a climate more conducive to reform.

¶13. (C) Representatives at VNCI said there is a sense that the Central Government is generally upset about the improprieties of provincial officials and that many businesses are also frustrated by working with local authorities in Vietnam. With respect to land clearance, one senior VNCI director said businesses are willing to handle the land clearance negotiations and cover compensation costs, but that often times they "can't cut through the red tape and determine what the rules of the game are."

¶14. (C) The VNCI polls small and medium enterprises about the proportion of red books they hold for the land on which they operate and asks businesses to assess the risk of government expropriation they face. Experts and businesses generally respond that the two biggest problems with respect to land management are the unwieldy land use planning process and the insufficient compensation scales established by officials in each province, both issues raised regularly by land rights activists. The Dragon Capital analyst we spoke with said provinces face "liquidity issues" which lead them to a "chicken or egg" dilemma. They need funds to compensate individuals when their land is appropriated, but cannot get the funds without first selling the land to developers--often at the higher industrial zone rates. This encourages former landholders to demand more compensation or file a grievance. The analyst said provinces want to hand the process over to private actors in order to speed up resolution of disputes and generate income flows.

Potential Solutions

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¶15. (C) To address these issues, the private-sector expert recommended improving leasing procedures and/or boosting

provincial revenues so that money from land sales is more readily available for compensation. He also suggested the GVN develop strategies to enhance central oversight over the agencies responsible for implementing land use laws. VNCI representatives said Project 30, a VNCI-supported initiative that is beginning to address administrative reform, will also take up land administration laws in coordination with MONRE, the Ministry of Agriculture and Rural Development, the Ministry of Construction and the Ministry of Finance. VNCI plans to develop an inventory of administrative procedures and then take steps to fill the gaps the inventory process illuminates.

¶16. (C) STAR representatives have also suggested the Government Inspectorate establish a system of field-specific administrative tribunals to decrease the burden on the ill-equipped legal system and create arbitration bodies that would mitigate the undue influence party committees have on local courts. MONRE expressed interest in the ideas, but the proposal stalled over concerns it would duplicate the systems already in place. Recently, however, the GI has reached out to STAR again to discuss the idea and suggested having a workshop on the subject, though financing for such an endeavor is still a looming question, STAR representatives say.

¶17. (C) Comment: Many land rights activists may have valid claims, while many may not. What is clear is that in many parts of Vietnam, getting a prompt and reasonable response from local authorities has proved elusive, underscoring the need for greater legal and administrative reform that will build more trust and transparency in the dispute resolution process. The lack of transparency has only served to strengthen perceptions of injustice and foment the frustrations that have led to land rights protests--and the eventual arrests and trials of organizers--across the country. While individuals within the GVN and the private sector are increasingly acknowledging the complex, sensitive and urgent nature of land rights issues in Vietnam, agreement on potential solutions remains a distant goal. End comment.

¶18. (U) This cable was coordinated with Embassy Hanoi.
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